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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,805	05/31/2000	ILAN BEN-OREN	22350/12	1999

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EXAMINER	
NASSER, ROBERT L	
ART UNIT	PAPER NUMBER
3736	

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/508,805	Ben-Oren
Examiner	**Art Unit**
Robert Nasser	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Sep 10, 2002 .

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-111 is/are pending in the application.

4a) Of the above, claim(s) 8-10, 14, 23, 26-33, 35, 37-41, 45, 47, 49, 51-57, is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-7, 11-13, 15-22, 25, 34, 36, 42-44, 46, 48, 50, 58-62, 67, and 70-7 is/are rejected.

7) ☒ Claim(s) 24 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 14
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Claims 42 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are rejected as being duplicate so of each other.

Claims 1-7, 11-13, 15-22, 24, 25, 34, 36, 42-44, 46, 48, 50, 58-62, 67, and 70-73 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group and species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 13.

The examiner notes that applicant listed claims 68, 69, and 74 as being drawn to the elected grouping, but these claims depend from non-elected claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3, 5, 7, 11-13, 18, 42-44, 50, 59, 67, and 70-73 are rejected under 35 U.S.C. 102(e) as being anticipated by Kubo et al. Kubo et al shows an isotopic gas analyzer that takes the ratio of 13CO2 to 12CO2 in human breath with two wavelength stable light sources and a detector for detecting the absorption by each species. The examiner notes that the collection is dynamic int hat it adjust the conditions to be the same as the reference.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 4, 6, 19-21, 25, 34, 36, 48, 60, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo et al in view of Rosenfeld et al. Kubo does not use a gas discharge lamp. Rosenfeld et al is a gas analyzer that does. From this teaching, it would have been obvious to modify Kubo et al to use a gas discharge lamp, as it is merely the substitution of one known light source for another. With respect to claim 21, choppers can space measurements signals in frequency of phase.

Claims 15-17 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo et al in view of Cooper et al. Kubo et al has a reference cell, but alternates measurements, rather than having two separate channels. Cooper et al shows two channels a measurement channel and a reference channel. From this teaching, it would have been obvious to modify Kubo

to use 2 parallel channels, as it is merely the substitution of one known equivalent arrangement for another.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo et al in view of Micheels et al. Kubo et al does not use a beam homogenizer.. Micheels does. Hence, it would have been obvious to modify Kubo to use such a beam homogenizer, as it is merely the substitution of one known equivalent measuring arrangement for another.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo et al in view of Rosenfeld et al as applied to claims 2, 4, 6, 19-21, 25, 34, 36, 48, 60, and 61 above, and further in view of Micheels et al. The above combination has two separate detectors. Micheels et al teaches using a single detector for two measurement wavelengths. Hence, it would have been obvious to modify the above combination to use a single detector, as it is merely the substitution of one known equivalent for another.

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gross, Murnick, and Weckstrom all show other isotopic gas analyzers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser Jr. whose telephone number is (703) 308-3251. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 8:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg, can be reached on (703) 308-3130. The fax phone number for this Group is (703) 308-0758.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [**max.hindenburg@uspto.gov**].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

RLN
November 26, 2002

ROBERT L. NASSER
PRIMARY EXAMINER